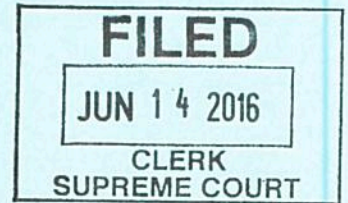


SUPREME COURT OF KENTUCKY
NO. 2015-SC-000173-D
COURT OF APPEALS FILE NOS. 2013-CA-000891,
2013-CA-000930, 2013-CA-001642
JEFFERSON CIRCUIT COURT ACTION NO. 11-CI-503339



JUDE MARIE WEBER (f/k/a LAMBE)

APPELLANT

V. DISCRETIONARY REVIEW FROM COURT OF APPEALS
File Nos. 2013-CA-000891, 2013-CA-000930, and 2013-CA-001642

THOMAS FRANCIS LAMBE

APPELLEE

A handwritten signature in blue ink, appearing to read "E. L. Mosley", written over a horizontal line.

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CERTIFICATE OF SERVICE

It is hereby certified that on the 10th day of June, 2016, a copy of the foregoing was served by first class mail, postage prepaid, on Allen McKee Dodd, Dodd & Dodd Attorneys, PLLC, 2000 Waterfront Plaza, 325 West Main Street, Louisville, KY 40202, and Jefferson Circuit Court, Family Division 9, 700 W. Jefferson Street, Louisville, KY 40202.

A handwritten signature in blue ink, appearing to read "M. Thomas Underwood", written over a horizontal line.
M. THOMAS UNDERWOOD

I. STATEMENT CONCERNING ORAL ARGUMENT

The Appellee agrees with the Appellant that oral arguments would not aid the Court in its understanding of the case, and would only subject the parties to additional, unnecessary expense.

II. COUNTERSTATEMENT OF POINTS AND AUTHORITIES

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MAY IT PLEASE THE COURT:

III. COUNTERSTATEMENT OF THE CASE

This appeal arises from the dissolution of the marriage between Thomas Francis Lambe (“Tom”) and Jude Marie Lambe (now Weber) (“Jude”). The parties were married on October 10, 1992, and separated in June 2011. (R. 002¹.) Two children were born of the marriage: Margaret, born December 1, 1996, and Kevin, born September 19, 1999. (R. 002.) Margaret, who was diagnosed with juvenile diabetes at the age of 2, was also diagnosed with an eating disorder approximately 2 or 3 months before trial. (VR No. 2: 11/15/12; 9:37:25) Despite her health problems, she was attending Assumption High School full time at the time of trial, where she was a straight-A student in the honors program. (VR No. 2: 11/15/12; 9:36:00) Margaret is now over 18 and has graduated from high school.

Tom filed a petition for dissolution on September 26, 2011 in the Jefferson Family Court. (R. 006.). Trial was held on November 14 and 15, 2012. The testimony showed that Jude is a bright, healthy, educated woman capable of gainful employment. (VR No. 1: 11/14/12; 10:03:30.) After graduating from Sacred Heart Academy in Louisville, she earned a Bachelor’s Degree in Communication from the University of Louisville in 1988. (VR No. 1: 11/14/12; 10:09:09.) Following graduation, she worked for various companies, including Chevron, Plexco, and Vencor until she became pregnant with the parties’ first child in 1996. During her years of employment, Jude’s income was in the \$26,000 - \$28,000 range.

¹ All citations to the record contained in this brief refer to the record certified in the first appeal of this matter on September 9, 2013, unless otherwise noted.

Tom's expert, Robert Tiell, performed a vocational assessment of Jude. (VR No. 1: 11/14/12; 9:57:11.) After meeting with Jude on multiple occasions, reviewing her education and work history, and administering several tests to gauge her abilities and interests, Mr. Tiell concluded that Jude is currently employable and that she could earn about \$30,000 to \$35,000 per year at her current skill level. [VR No. 1: 11/14/12, 9:58:50, 10:12:30; Petitioner's Trial Exhibit ("PTE") M.] Jude's own expert, Linda Jones, also found her to be employable, albeit with a more conservative earning potential of \$25,461 to \$31,456, on average. [Respondent's Trial Exhibit ("RTE") 3.]

In her testimony at trial, Jude described a typical day in her life as it then existed. (VR No. 2: 11/15/12; 11:23:30) It consisted of preparing Margaret's breakfast, packing her lunch, and driving her to the neighbor's house for the car pool to school. Jude would then return home, prepare breakfast for Kevin, and take him to school, all before 8:30 a.m. On Tuesdays, Margaret would be done with school by 12:30, but the rest of the week she was there until 2:30. Kevin's day lasted longer, and he took the school bus home. During the evening, Jude would prepare the children's dinner and relax with them in front of the television. Both Jude and Tom participated in taking the children to extracurricular activities. From the time Jude dropped the children off at school until school was over, Jude testified that she would work around the house.

The evidence at trial further showed that during the marriage the parties paid all of their expenses through a joint Fifth Third Bank account that was still being used at the time of trial. (VR No. 1: 11/14/12; 3:26:00; VR No. 2: 11/15/12, 9:25:00, 11:52:15.) In addition, all family income (including Tom's net income from General Electric) was deposited into this account. At trial, Tom introduced as PTE K the bank statements from

the Fifth Third account for the period covering 9/5/10 through 9/15/11, along with a detailed summary thereof. During that year, Tom's total *net* earnings from GE were \$118,499.74. This included a bonus Tom testified he would probably not be receiving after 2014, due to his new position at GE. Together with tax refunds and miscellaneous income received during that same period, Tom's total deposits – his total net income – was \$126,058.03, or \$10,504.84 per month. Tom also introduced, as PTE J, the Fifth Third statements for 9/16/11 to 10/15/12, and a detailed summary thereof. During that 13-month period, Tom's total net earnings from GE, including his bonus, were \$132,124.19. Excluding transfers from savings and the exercise of stock options, deposits during that same period were \$11,135.22. This yielded a total net income of \$143,259.41, or \$11,019.95 per month.

Jude introduced as RTE 10 an analysis performed by her expert, Helen Cohen, detailing all deposits to and debits from this Fifth Third account over a period of 3 years (2009 – 2011). (VR No. 1: 11/14/12; 2:33:30) This analysis showed that the average monthly expenses for the entire family during that time period was \$7,194.49. Due to Tom's thriftiness and careful financial planning during the marriage, the parties were able to devote a considerable portion of his earnings to savings and retirement.

On February 26, 2013, the Family Court entered its Findings of Fact, Conclusions of Law, Judgment and Decree of Dissolution of Marriage ("Judgment"). (R. 453.) The Family Court restored the following nonmarital assets to the parties (R. 461, 469 - 470):

Jude		Tom	
<i>Asset</i>	<i>Value</i>	<i>Asset</i>	<i>Value</i>
67.8% of Chevron stock	45,456.09	13.8% of GE Stock	253.20
Vanguard IRA	38,589.00	GE S&SP (non-marital)	37,991.66
TOTAL	\$84,045.09	TOTAL	\$38,244.86

The Family Court then divided the marital assets as follows (R. 459 – 462, 468 – 472):

Jude		Tom	
<i>Asset</i>	<i>Value</i>	<i>Asset</i>	<i>Value</i>
2006 Honda Pilot	10,125.00	2007 Toyota Highlander	13,750.00
½ unit of HPG	25,245.50	½ unit of HPG	25,245.50
½ ARGI Brokerage	95,750.00	½ ARGI Brokerage	95,750.00
½ ARGI IRA	118,949.06	½ ARGI IRA	118,949.06
½ ARGI Roth IRA	41,747.37	½ ARGI Roth IRA	41,747.37
½ of marital GE shares	4,272.75	½ of marital GE shares	4,272.75
½ GE S&SP (marital)	128,619.67	½ GE S&SP (marital)	128,619.67
Vanguard	35,456.79	Vanguard	13,030.40 ²
32.2% of Chevron stock	21,703.61	GE stock options	46,796.00 ³
½ of House Proceeds	200,000.00 ⁴	½ of House Proceeds	200,000.00
TOTAL	\$681,870.08	TOTAL	\$688,160.75

In addition, the Court ordered Tom to pay an “equalization” amount of \$18,873.90 to Jude, and contribute \$15,000 to her attorney’s fees, thus increasing her marital portion to \$715,743.98, and decreasing his to \$654,286.85. Thus, under the Judgment, Jude received approximately \$800,000 in assets, the majority of which were income-producing, compared to less than \$700,000 awarded to Tom.

After assigning this substantial amount of property to Jude, the Family Court proceeded to determine that she was entitled to maintenance. Despite her education and background, the Family Court refused to impute any income whatsoever to Jude, believing that she was incapable of working “full-time” due to the health condition of the parties’ daughter, Margaret. (R. 471.) The Family Court did not opine on whether Jude could work on a part-time basis, even while the children were in school. Nor did the Family Court take into account any income that Jude might be able to receive from the

² This amount was not actually received by Tom, but used by him to pay family expenses. (R. 478-479, 489-494.)

³ The actual value of the stock options was \$10,712. (PTE G; RTE 25.) However, the Court of Appeals failed to correct this error.

⁴ The house actually sold after the Court’s Judgment was entered, but it was anticipated that each party would net approximately \$200,000 from the sale.

substantial assets awarded to her. Instead, the Family Court found that Jude's own monthly living expenses were \$4,400.00, and that Tom should pay them. (R. 463)

Without explaining how it arrived at the amount, the Family Court further determined that the children's monthly expenses totaled \$3,589⁵, and ordered Tom to pay 61% of that amount (\$2,150.09) as child support, in addition to \$108 per month that he paid in health insurance for the children. (R. 463, 466.) The Family Court set Jude's portion of the child support obligation at \$1,440.00 per month. (R. 463.) However, the Family Court then ordered Tom to also pay *Jude's share* of the child support obligation (\$1,400.00) by including that amount in her maintenance award, which the Court set at \$7,300 per month⁶. The Family Court granted this sum to Jude for a period of nine years. (R. 472.) The Family Court also found that Tom's monthly expenses were \$4,500 per month. (R. 463.) Even though these sums, when added together (\$7,300 + \$4,500 = \$11,800), exceeded Tom's net income even before the children's education and medical costs were taken into account, the Family Court deemed Tom capable of meeting these obligations based solely on his **gross** income, which it found to be \$18,756 per month. (R. 472.)

Both parties filed motions to alter, amend or vacate the Judgment. (R. 474, 504) On April 30, 2013, the Family Court entered its Order on those motions, making a few minor changes, but otherwise denying the parties' requests. (R. 669) Both parties appealed. In an Opinion rendered November 14, 2014, the Court of Appeals determined that the Family Court erred when it included expenses relating to the parties' children in

⁵ This did not include education costs of \$1,025 per month and untold medical costs related to Margaret's health problems.

⁶ In addition to Jude's expenses of \$4,400 and her portion of the children's expenses of \$1,400, the Family Court surmised that Jude would need an additional \$1,460 per month to pay taxes. (R. 463.)

its calculation of the maintenance award granted to Jude, and that it erred by failing to make findings that justified its award of maintenance for a period of nine years.

Jude filed a Petition for Rehearing under CR 76.32, requesting that the Court of Appeals modify or extend its Opinion, and reinstate the trial court's rulings on the calculation of maintenance. The Court of Appeals denied Jude's Petition for Rehearing on March 11, 2015. On December 10, 2014, Jude moved this honorable Court for discretionary review of the Court of Appeals' Opinion, which this Court granted.

IV. ARGUMENT

A. The Court of Appeals did not misconstrue the issues presented on appeal or the applicable law in vacating the trial court's decision on maintenance.

1. The Court of Appeals correctly found that the Family Court abused its discretion by including expenses attributable to the children in its calculation of Jude's living expenses.

Jude correctly notes, as did the Court of Appeals, that this issue is one of first impression in Kentucky. However, the vast majority of jurisdictions which have addressed this issue, including the Missouri court which the Court of Appeals cited, have concluded that spousal maintenance and child support are two distinctly different concepts, and that inclusion of a child support obligation in the calculation of maintenance is improper. See, for example: *Robinson v. Robinson*, 707 S.E.2d 785 (N.C.App. 2011); *Lin v. Lin*, 37 So.3d 941 (Fla. App. 2 Dist. 2010); *Lovejoy v. Lovejoy*, 782 N.W.2d 669, 2010 SD 39 (S.D. 2010); *Loughlin v. Loughlin*, 889 A.2d 902, 93 Conn. App. 618 (Conn. App. 2006); *Saia v. Saia*, 788 N.E.2d 577, 58 Mass. App. Ct. 135 (Mass. App. Ct. 2003); *Lambert v. Lambert*, 395 S.E.2d 207, 10 Va. App. 623 (Va. App. 1990). Jude has not pointed to a single case – from Kentucky or any other jurisdiction –

that supports her position that a trial court should add the expenses of the children to those of the recipient spouse when calculating maintenance.

Jude's primary argument is that, unless her proportionate share of the children's expenses are included in her own monthly expenses, the trial court would be ignoring "a significant portion of a custodian's reasonable monthly living expenses". This argument is meritless. Jude is putting the cart before the horse. Under Kentucky's statutory scheme, the amount of child support is based on the combined incomes of the parents – not the other way around. Kentucky's statutory scheme further requires the trial court to review both expenses separately – the children's expenses through the calculation of child support under KRS 403.212, and the parents' expenses through the determination of maintenance under KRS 403.200. Contrary to Jude's argument, no expenses are ignored, as long as the statutes are properly followed.

Of course, this places on the parties, and in particular the spouse seeking maintenance, the burden of demonstrating what and how much these respective expenses are. The trial court then has a duty under CR 52.01 to "find the facts specifically". Where the system fails, as in this instance, is when the spouse seeking maintenance and/or the trial court fail to fulfill their obligations. For example, in this case, Jude's expert, Helen Cohen, represented that in the three year period leading up to the parties' separation, the average total monthly expenses of the entire family was \$7,194.49. (RTE 10) Jude, however, argued at trial that her monthly expenses were at least \$9,932.00, which was unsupported by the evidence. (RTE 9). The Family Court then went on to find that Jude's living expenses were \$4,400, and that the children's expenses were

\$3,697. In doing so, the Family Court never explained how it arrived at these numbers, nor did it identify the evidence upon which it presumably relied.

Jude's claim that KRS 403.200, which requires a court to consider money received through child support when it is determining the financial resources of a party, should be interpreted to mean the court should also consider the children's expenses when it is deciding how much the payor spouse will pay in maintenance, simply does not reflect the language of the statute. It is not the function of the courts to "add words and meaning to a statute that is clear on its face." *Cole v. Thomas*, 735 S.W.2d 333, 335 (Ky. App. 1987). KRS 403.200 simply does not provide that amounts expended by a custodian for the care and support of the children may be included in the determination of maintenance.⁷ "As with any case involving statutory interpretation, our duty is to ascertain and give effect to the intent of the General Assembly. We are not at liberty to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used." *Beckham v. Bd. of Educ. of Jefferson County*, 873 S.W.2d 875, 877 (Ky. 1994), citing *Gateway Construction Co. v. Wallbaum*, 356 S.W.2d 247 (Ky. 1962).

Under Jude's line of reasoning, Tom would be responsible for 100% of both her expenses and the children's expenses (not to mention his own). Kentucky's child support scheme is based on a proportional system, with each parent paying a portion of the children's expenses in proportion to his or her income. To require one party to pay ALL of the expenses would defeat the purpose of the statute, and as the Court of Appeals wisely reasoned, create "a slippery slope with far-reaching implications."

⁷ By contrast, KRS 403.212(2)(b) *does* require a court to consider any "alimony or maintenance received" as part of a parent's gross income in determining the amount of child support.

The Court of Appeals correctly found that the Family Court's method of apportioning the children's expenses was erroneous, and the Family Court abused its discretion by including Jude's portion of the children's expenses in its maintenance calculation. The Family Court's calculation was arbitrary, unreasonable and unfair, and the Court of Appeals' decision on that issue should be affirmed.

2. The relevant Missouri and Kentucky statutes are virtually identical and the Court of Appeals was correct in taking into consideration Missouri law to determine an issue of first impression in Kentucky.

Jude argues that "this Court should not rely on Missouri law in making maintenance determinations." Interestingly, however, Jude does not even cite to the Missouri statute dealing with maintenance, V.A.M.S. 452.335 of Missouri Revised. In any event, contrary to Jude's allegation, Missouri law is not fundamentally different from Kentucky law with respect to maintenance determinations. In fact, Missouri's maintenance statute is almost verbatim that of Kentucky's, and, just like ours, is based on a spouse's inability to meet her own needs, not those of the children. Compare:

Missouri (§ 452.335)

1. In a proceeding for nonretroactive invalidity, dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order to either spouse, but only if it finds that the spouse seeking maintenance:
 - (1) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and
 - (2) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.
2. The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

- (1) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

... [Emphasis added.]

Kentucky (§ 403.200)

- (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:
 - (a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and
 - (b) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.
- (2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:
 - (a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

... [Emphasis added.]

Jude points out that the case on which the Court of Appeals relied, *Cohen v. Cohen*, 73 S.W.3d 39 (Mo. App. W.D. 2002), was based on another case, *Nichols v. Nichols*, 14 S.W.3d 630 (Mo. Ct. App. 2000), in which the issue facing the Missouri court was whether expenses of *grandchildren* could be considered in a determination of maintenance. While that would differentiate *Nichols*, it does not hold true for *Cohen*, which was the case that the Court of Appeals specifically cited, and which **did** involve expenses of the parties' children for whom they were both responsible, just as in the case *sub judice*. Moreover, numerous other cases from Missouri (as well as other

jurisdictions, as set out on page 2 of this Response), have said that including expenses of the parties' children in a calculation of maintenance is error. See, e.g., *Ferry v. Ferry*, 327 S.W.3d 599 (Mo. App. 2010); *In re Marriage of Neu*, 167 S.W.3d 791 (Mo. App. 2005); *Buchholz v. Buchholz*, 166 S.W.3d 146 (Mo. App. 2005).

Contrary to Jude's argument, applying the so-called "Missouri" rule would not result in an exclusion of children's expenses nor subject children to a lower standard of living. Both Missouri and Kentucky, as well as a majority of the other states, recognize that there is a clear distinction between the needs of the spouse and the needs of the children. The maintenance statutes expressly address the ability of the spouse seeking maintenance to provide for her own needs, not those of the children. Similarly, the child support statutes are expressly for the purpose of providing for the children's expenses, not the parents'. The Kentucky Child Support Guidelines establish the minimum level of support required to cover the children's expenses. However, by definition, those guidelines are "rebuttable" and a trial court "may deviate from the guidelines where their application would be unjust or inappropriate", as long as the reason for the deviation is specifically identified by the trial court. KRS 403.211. The reasons include, but are not limited to, any extraordinary needs of the children. Thus, while the respective approaches may be different, both the Kentucky and Missouri statutes provide avenues of relief to ensure that the children's expenses are covered. The proper forum for changing the statutes is the legislature, not the court. Accordingly, the Court of Appeals was correct in finding that the trial court erred by including the children's expenses in its calculation of Jude's maintenance.

3. The Court of Appeals properly remanded for more specific findings the issue of the duration of Jude's maintenance award.

Jude argues that the trial court made sufficient findings of fact to support its determination to award maintenance for nine years. As Jude pointed out in her Petition for Discretionary Review (but has downplayed in her brief), the trial court's decision to award maintenance to Jude was "based primarily on Margaret's health." However, this would not be a sufficient finding under KRS 403.200 because, at the time that the decree was entered, Margaret was already 16 years old, and would be emancipated long before the nine years is up. In *Chapman v. Chapman*, 498 S.W.2d 134 (Ky. 1973), Kentucky's highest court at that time ruled that when a maintenance award is granted because a spouse is prevented from seeking outside employment by reason of being a custodian of a child, the decree should reflect that "upon the death or emancipation of the child, or for any other reason relieving appellee of the responsibility of taking care of the child, the payments should cease." The Family Court's failure to make specific findings of fact as to why Jude was entitled to maintenance for a period of nine years – the majority of which time Margaret would be an adult – was error.

The duration of a maintenance award is dependent upon two factors: "(1) the period over which the need exists, and (2) the ability to pay." *Combs v. Combs*, 622 S.W.2d 679, 680 (Ky. App. 1981). Although she argues that she can only expect to earn a "meager" income upon reentering the workforce, Jude ignores the vast amount of property that she received from the Family Court.⁸ Moreover, by allowing Jude to postpone her search for a job, even just a part-time one, because of Margaret's health condition, did not give her any incentive to see that Margaret's condition improve. Jude

⁸ It should be noted that since the trial Jude has obtained full-time employment with a starting salary of \$25,000 per year, despite her representations throughout her brief that she is "unemployable".

is younger than Tom; is in good health; has a college degree; and was evaluated by two different experts who found her extremely employable. The Family Court's award of over \$10,000 per month in child support and maintenance (which exceeded Jude's own estimation of her monthly expenses, in which she included the children's expenses) for nine years gave her absolutely no incentive to become self-reliant for almost a decade.

Tom and Jude were married for only 18 years prior to their separation. Contrary to Jude's claim, there was no evidence that the parties experienced a high standard of living, nor has Jude cited any support for this statement. There was no testimony of exotic vacations or expensive cars (in fact, at the time of the divorce, both parties were driving vehicles over 5 years old and more than 100,000 miles). The entire family lived on less than \$7,200 per month, with a significant portion of Tom's earnings going into savings and retirement.

Although Jude claims that the Family Court's findings were sufficient to support its decision to award maintenance for a period of nine years, she continues to insist that the award should be open-ended based on the length of the marriage, the uncertainty of her future employment, and the huge disparity in income. Jude's reliance on *Gripshover v. Gripshover*, 246 S.W.3d 460 (Ky. 2008) in this regard, however, is misplaced, as the facts of that case are entirely distinguishable from the facts herein. In *Gripshover*, for example, the wife was significantly older than the husband, whereas Jude is younger than Tom. Moreover, Ms. Gripshover had only a 10th grade education and had only worked briefly in a grocery store and cleaning houses. By contrast, Jude has a Bachelor's degree in communications and has worked for major companies such as Chevron, Plexco, and Vencor. In *Gripshover*, a majority of the assets had been placed into an irrevocable trust,

making them unavailable for distribution to the wife. The Family Court, however, divided the Lambe marital assets ostensibly in half (but arguably in favor of Jude). Ms. Gripshover lived in a rural area where her housekeeping services were not in demand; Jude lives in a metropolitan city with skills that make her highly marketable. Ms. Gripshover had significant health problems that limited her ability to work; Jude has no such problems.

The Court of Appeals correctly found that the Family Court's award of maintenance for a nine year period was unsupported by sufficient factual findings, therefore its remand of that issue should be affirmed.

B. The Court of Appeals did not misconstrue the issues presented nor the applicable law with regard to Jude's Cross-Appeal.

1. The Court of Appeals did not err in affirming the trial court's rejection of Jude's calculation of Tom's income.

The trial court found that Tom's annual income was \$222,076.00 annually. (R. 456.) On appeal, Jude argued that the trial court erred in this finding, as Tom's 2012 tax return showed gross income of \$283,092, and Jude's expert, Helen Cohen, calculated his 2012 income as \$285,496.51. However, both the 2012 tax return and Ms. Cohen's calculation included bonuses and stock options that Tom historically had received. Tom's unrefuted testimony at trial established that, due to his new job position, he would not be receiving bonuses in the future. (R. 455-456.) Moreover, the trial court had already divided Tom's stock options between the parties as a marital asset. (R. 469-470.) See *Penner v. Penner*, 411 S.W.3d 775 (Ky. App. 2013) (finding it was error for a trial court to include a husband's stock shares both as a marital asset and as income to the husband).

The Court of Appeals concluded that “the trial court thoroughly considered all of the evidence concerning Thomas’ income”, and affirmed that portion of the trial court’s decision. (COA Opinion, p. 23) Although the Court of Appeals focused on Jude’s references to Tom’s 2012 tax return, this does not change the fact that the trial court properly refused to include in Tom’s income bonuses that he would no longer receive and stock options that had not vested.

2. **By remanding the issue of calculation of monthly expenses for Jude and the children, the Court of Appeals adequately addressed Jude’s argument that the trial court erred in determining her monthly expenses.**

Jude argues that the Court of Appeals did not directly rule on her argument that the trial court underestimated her monthly living expenses. Jude had argued in her appellate brief that her own monthly expenses exceeded \$5,840 per month. However, because the trial court had improperly included the children’s expenses in its calculation of Jude’s own expenses when it awarded maintenance, the Court of Appeals remanded the case to the trial court so that the expenses could be recalculated. Thus, the Court of Appeals *did* address Jude’s argument, just not in the way that she wanted.

3. **The Court of Appeals did not err in finding no abuse of discretion in the trial court’s denial of Jude’s request for Tom to pay all of her attorney’s fees.**

After the initial trial in this matter concluded, Jude demanded payment of more than \$75,000 in attorney fees and costs. (R. 297–338.) On January 15, 2013, prior to issuance of the Judgment, Jude unilaterally, and without permission from either Tom or the Family Court, liquidated over \$35,000 in mutual funds from the parties’ Vanguard account and paid this sum to her lawyer, despite the existence of a status quo order. (R. 407–415.) In October, 2012, she had committed a similar act by withdrawing an

additional \$15,000 from the parties' joint savings account to pay her attorney, again without permission and in violation of the Family Court's orders. In its Judgment, the Family Court ruled:

After her recent liquidation of the parties' Vanguard Account, Ms. Lambe has used \$50,000 in marital assets to pay her attorney fees. Therefore, Mr. Lambe will be credited with having contributed \$25,000. The Court orders him to pay an additional \$15,000 in light of the disparity in the parties' financial resources. (R. 472.)

Jude appealed the Family Court's refusal to order Tom to pay all of her attorney's fees. The Court of Appeals affirmed. Jude now renews her demand that all of her fees be paid by Tom.

Jude has presented no legitimate argument demonstrating that the Family Court abused its discretion in refusing to grant her more fees. If anything, the abuse of discretion lay in granting her an award of fees at all. An award of attorney fees is based on a disparity in financial resources. KRS 403.220 provides, in pertinent part:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment.

Moreover, "It is well settled that a trial court has broad discretion in awarding attorney fees to either party in a dissolution proceeding." *Age v. Age*, 340 S.W.3d 88, 97 (Ky. App. 2011), citing *Tucker v. Hill*, 763 S.W.2d 144 (Ky. App. 1988). In determining whether such an award is justified, the court is obligated to consider the financial resources of both parties before ordering a party to contribute to the other party's attorney's fees. *Miller v. McGinity*, 234 S.W.3d 371 (Ky. App. 2007); *Hollingsworth v. Hollingsworth*, 798 S.W.2d 145 (Ky. App. 1990). Even if a disparity in the parties'

respective financial resources exists, KRS 403.220 provides that a court “may” order one party to contribute to the other party’s reasonable attorney’s fees – but it is not mandatory. *Castle v. Castle*, 266 S.W.3d 245 (Ky. App. 2008).

As set out in the Counterstatement of the Case, above, Jude received about \$800,000 in assets under the Family Court’s Judgment. In addition, the Family Court divided Tom’s pension with Jude and awarded her maintenance. By contrast, Tom was received less than \$700,000. However, that amount included the Family Court’s inflated value for his vested, exercisable GE stock options (\$46,796 versus the actual value of \$10,712) and \$13,030.40 in Vanguard funds that went to pay family expenses. Therefore, the value of the marital and nonmarital assets actually received by Tom was much less. There was a clear imbalance in the assets awarded to Tom compared to the assets awarded to Jude. In addition, while the Family Court determined that Jude could not work “full-time” until Margaret’s condition stabilized, it did not conclude that anything prevented her from working part-time, especially during the day when Margaret is in school. The expert witnesses in this case testified that Jude is capable of earning anywhere from \$21,169 to \$35,000 per year, given her education and background. On a part-time basis, then, Jude was capable of bringing in an additional \$882 to \$1,458 per month – exclusive of the income she would earn from the assets apportioned to her.

In this case, Jude received at least one-half of the marital assets, and received substantially more nonmarital assets than Tom. Further, she was awarded a majority of his net income via child support and maintenance, which meant that even though his income was greater than Jude’s, in reality Jude was receiving the majority of his income

after taxes. There was no significant disparity in financial resources, and certainly not enough to warrant an increase in the attorney fees that Jude has already received.

V. CONCLUSION

Jude has failed to demonstrate that the Court of Appeals misconstrued any issues of law or fact. Likewise, she has failed to provide any law supporting her arguments that the children's expenses should be included in the calculation of maintenance, or that the trial court was not required to provide specific findings of fact supporting its 9-year maintenance award. The Court of Appeals correctly concluded that the Family Court did not abuse its discretion by excluding non-existent bonuses and uncertain stock options from Tom's income, although it should have required the Family Court to focus on Tom's *net* income, not his gross income when determining maintenance. The Court of Appeals properly remanded the issue of calculating Jude's expenses, and correctly found that there was no abuse of discretion in denying Jude an award of all her attorney's fees, especially when an award of fees was not warranted in the first place.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "E. L. Mosley", is written over a horizontal line.

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